



**OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.**

Attorneys at Law

2400 N Street, N.W., Fifth Floor
Washington, DC 20037
Telephone: 202.887.0855
Facsimile: 202.887.0866
www.ogletreedeakins.com

VIA ELECTRONIC FILING

April 12, 2011

Lester A. Heltzer
Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

Re: D.R. Horton – 12-CA-25764

Dear Mr. Heltzer:

This is to request permission to substitute the attached corrected page 15 of the Respondent's Answering Brief to General Counsel's Exceptions, filed April 11, 2011. The attached page corrects an incomplete case citation on the first line of the original page 15. Thank you for your anticipated cooperation.

Very truly yours,

Bernard P. Jeweler

cc: w/attachment via electronic mail:

John.King@nrlrb.gov
rceller@forthepeople.com
mikec@condevhomes.com

Nielsen S.A. v. Animalfeeds International Corp., 599 U.S. ___, 130 S.Ct. 1758 (2010), the Court held that it is improper and inconsistent with the FAA for a court to impose class arbitration on parties to a clearly drafted arbitration agreement when no language in the agreement would provide for such. *Id.* at 20, 23. The Court found parties to an express arbitration agreement cannot be compelled to do something under the agreement that clearly is outside the actual terms of the agreement. *Id.* To do so would be amount to a forced modification of an agreement between parties which is contrary to the FAA.

The General Counsel cites *U-Haul of California*, 347 N.L.R.B. 375 (2006), in support of his contention that the Arbitration Agreement violates Sections 8(a)(1) and 8(a)(4). Apart from other distinguishing factors noted above, neither Board decision even attempted to reconcile the “what employees reasonably could believe” standard with the FAA. Notably, the General Counsel does not cite any Supreme Court authority for the proposition that the Board may interfere with thousands of individual contracts based on a rule that flatly contradicts congressional intent as set forth in the text of a federal statute. *U-Haul of California* offers no basis for ignoring the FAA.

For the reasons explained above, the Board simply does not have the authority to order the Company to modify and rescind an arbitration agreement as is sought by the General Counsel. The only grounds for rescinding or modifying an arbitration agreement are those applicable to contracts generally, according to the state law principles of the applicable jurisdiction. 9 U.S.C. § 2; *Gilmer*.

2. The Board should neither impose nor extend remedial obligations on the Company.

The Company does not agree that any violation of the Act exists or has existed in this matter as was outlined in the Company’s March 14, 2011 exceptions and supporting brief to